

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRIMINAL REVISION NO.2521 OF 2004

DATE OF DECISION: JANUARY 11, 2007

Municipal Council, Jagadhri.

.....Petitioner

VERSUS

M/s Malhotra Metal Industries & Anr.

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Ashish Gupta, Advocate for
Mr. R. K. Gupta, Advocate,
for the petitioner.

None for the respondents.

RANJIT SINGH, J.

This revision is directed against the order dated 1.6.2004 passed by the Additional Sessions Judge, Jagadhri, whereby he has allowed the revision against the order dated 10.4.2002 passed by Sub Divisional Magistrate, Jagadhri, under the provisions of Section 133 Cr.P.C.

The petition was filed before the Sub Divisional Magistrate, Jagadhri, by Municipal Council, Jagadhri, alleging that the petitioners (respondents herein) had encroached upon the property of Municipal Council by putting a slab on drain. It was accordingly urged that the same was causing nuisance and hence, a complaint under Section 133 Cr.P.C. was filed. The Sub Divisional

Magistrate, Jagadhri, passed an order, directing the respondents herein to remove unauthorised encroachment from the land in dispute within 15 days, otherwise the same was ordered to be removed by the present petitioner-Municipal Council. The said order was impugned before the Additional Sessions Judge, Jagadhri, by respondent-M/s Malhotra Metal Industries, Jagadhri. While allowing the revision filed by the respondents, the learned Additional Sessions Judge found that the Municipal Council-petitioner could not establish the essential ingredients of Section 133 Cr.P.C. Neither any date of encroachment was found mentioned nor site plan was noticed to have been appended. Even no evidence was led to show that the land where drain ran, belonged to Municipal Council. The entire case of the Council was sought to be supported by the evidence of solitary witness, Devender Kumar, who was the Law Clerk, working in the Council. He could not testify if the drain vested in the Municipal Council. As noticed, the Council had never issued any notice to the respondents under Section 181 of the Haryana Municipal Council Act. Not only that, the Court found that no complaint had been made in regard to any nuisance by any member of the public to the Municipal Council. Further finding was that placing of slabs on the drain did not result in any blockage. In fact, no witness was examined to prove the blockage. Even the spot inspection report was also not placed on file by the Magistrate. Accordingly, the revision filed by the present respondents was allowed and the order passed by Sub Divisional Magistrate was set-aside.

Learned counsel for the petitioner has submitted that by placing slabs over drain, the respondents have encroached upon the

land of Municipal Council. Despite repeated quarries, the counsel could not point out to any material from record to indicate that the action has resulted in any blockage of drain. He also could not point out if any complaint had been received by Municipal Council, indicating that placing of slabs on the drain was causing any nuisance. Counsel sought to contend that with the action of the respondents, the rain water would get blocked. This submission was made without any basis and without any material in its support. Counsel also could not say anything in regard to the finding of the Court that there was no evidence of blockage or that if there was any complaint from any member of the general public. Even he could not point out any evidence, which could show that the drain was owned by the Municipal Council.

Faced with this situation, the counsel placed strong reliance on the spot inspection done by Sub Divisional Magistrate. As noticed by the Additional Sessions Judge, no spot inspection report was placed on the file by the counsel. The counsel then referred to a judgment in the case of Rambabu Sharma Vs. Santosh Kumar and another, 2005 (4) R.C.R. (Criminal) 183. In my view, this judgment will have no applicability to the facts of the present case. It was held in this case that public nuisance can originate at a private place also, which is not the issue in the present petition. The other issue dealt with in this judgment related to the fact that it is not incumbent on the Magistrate to record evidence before he makes an order. No doubt, in this case it was held that the Magistrate could pass an order on the basis of a spot inspection, which in this case he did. However, the question in the present revision is to see if the basis of passing

an order under Section 133 Cr.P.C. was made out or not. An order under said Section can only be made if the action of any individual results in causing nuisance to public. There is no material on record to show that encroachment in this case was causing any nuisance to public at large or that any complaint in this regard has been made. Accordingly, the lower revisional Court was justified in holding that ingredients of Section 133 Cr.P.C. had not been established by the petitioner.

In view of the above, no case for interference in the impugned order is made out. The present revision is accordingly dismissed.

**January 11, 2007
khurmi**

**(RANJIT SINGH)
JUDGE**